Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Petition for Declaratory Ruling That tw telecom inc. Has The Right To Direct IP-to-IP Interconnection Pursuant To Section 251(c)(2) Of The Communications Act, As Amended, For The Transmission And Routing Of tw telecom's Facilities-Based VoIP Services And IP-In-The-Middle Voice Services	WC Docket No. 11-119

COMMENTS OF

O1 COMMUNICATIONS, INC. & VAYA TELECOM, INC.

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O1 Communications Inc. ("O1) and Vaya Telecom Inc. ("Vaya") submit these comments in support of tw telecom inc.'s ("tw") petition filed in the above-captioned proceedings to encourage the Commission to clarify that competitive local exchange carriers have the right to establish direct IP-to-IP interconnection with incumbent LECs for the transmission and routing of VoIP traffic. Such a declaration by the Commission will remove market distortions, provide regulatory certainty in the telecommunications sector, and advance the Commission's goal of transitioning to an all-IP network.

I. INTRODUCTION

A. About O1 Communications, Inc.

O1 is a California facilities-based competitive LEC. Founded in 1998, O1 had the initial objective of providing next generation data telecommunications services to Internet Service Providers (ISPs). Over the years, O1's service offerings have evolved with the industry to include wholesale bandwidth, PSTN trunking, and Session Initiation Protocol ("SIP") services,

which it provides to a variety of customers. Today, O1's network provides SIP trunking and peering gateways that receive, transport, and switch traffic in IP format.

SIP services, like those offered by O1, exemplify the flexible and innovative technologies that should represent the core of the Commission's intercarrier compensation reform efforts. SIP extends the open-standards spirit of the Internet to all types of communications over IP networks, enabling disparate computers, phones, televisions and software to communicate. Using SIP, service providers can freely choose among standards-based components and quickly harness new technologies. Users can locate and contact one another regardless of media content or the number of participants. SIP negotiates sessions so that all participants can agree on and modify session features, and can also be used to add, drop or transfer users. Allowing users to connect across any IP network (including wireline LAN and WAN, the public Internet backbone, or wireless service) and any IP device (phones, PCs, PDAs, mobile handsets), SIP provides a wealth of lucrative new possibilities. These possibilities not only improve how businesses and individuals communicate, but they do so at lower cost to the consumer.

O1 has designed its service offerings to respond proactively to market and customer demands. O1 offers SIP origination and termination services on its own network in California, and peers with customers and service providers nationwide. O1 responds to the specific needs of its customers by working with them to design solutions based on their unique requirements. In particular, O1 specializes in helping VoIP providers create convenient and cost-effective peering arrangements, offering these providers a single destination for their SIP sessions to be routed for termination to the PSTN. O1 is able to provide these services through a variety of arrangements, including a number of transport, origination, and termination agreements with other carriers and service providers, but it is unable to obtain direct IP-to-IP interconnections with ILECs. Given

the high degree of competition in the wholesale and IP origination and termination sector, in addition to competing based on the quality of its services and extensive network, O1's competitiveness relies on the prices it can offer, which depend largely on the manner in which O1 can obtain interconnection with other carriers. Therefore, the establishment of efficient direct IP-to-IP interconnections with the nation's largest ILECs is vital to its business.

B. About Vaya Telecom, Inc.

Vaya is a wholesale, facilities-based provider of SIP termination services in California. Vaya receives IP-based traffic from a wide variety of companies in IP-format (including nomadic and fixed VoIP service providers) over the Internet and through Vaya's own network, and then provides IP-to-PSTN protocol conversions services before terminating the traffic to the Public Switched Telephone Network ("PSTN") for delivery to its intended recipient. As part of this service, Vaya also provides low-cost transport for the traffic so as to provide the lowest possible costs to its clients. When Vaya cannot provide the transport itself because it lacks a direct connection with the called party's carrier, it must use a variety of other carriers to provide the necessary services through its Least Cost Routing services. By declaring that CLECs have the right to direct IP-to-IP interconnections, Vaya can avoid the duplicative and costly network arrangements many ILECs currently require to exchange traffic.

II. THE COMMISSION SHOULD DECLARE THAT COMPETITIVE LECS HAVE THE RIGHT TO DIRECT IP-TO-IP INTERCONNECTION WITH ILECS UNDER THE COMMISSION'S SECTION 201(A) AUTHORITY

One of the biggest impediments facing O1 and Vaya is their inability to obtain direct IP-to-IP interconnection with the nation's ILECs. But as even AT&T has stated:

> Due to technological advances, changes in consumer preference, and market forces, the question is *when*, not *if*, POTS service and the PSTN over which it is provided will become obsolete…. It is for that reason that one of the most important steps the Commission can take to facilitate an orderly transition to an

> all-broadband communications infrastructure is to eliminate the regulatory requirements that prolong the life of POTS and the PSTN.[1]

Similarly, Verizon has informed the Commission that "[o]ver time, more and more communications will be sent in IP-based format over IP and broadband networks."[2] As the PSTN migrates to IP technology, however, these ILECs refuse to offer direct IP-to-IP interconnections, claiming they have no such obligation based on the regulatory uncertainty surrounding VoIP traffic, or alternatively, that it is not technically feasible because the facilities required to interconnect via SIP are owned by their unregulated affiliates.[3]

Verizon went so far as to urge the Commission to "reject proposals to extend legacy interconnection regulations to IP networks."[4] By claiming there is no obligation to directly interconnect on an IP-to-IP basis, however, the ILECs are turning the foundation of the 1996 Act on its head. As stated in the preamble to the 1996 Act, the express purpose was to "promote competition" and "encourage the rapid deployment of new telecommunications technologies."[5] Clearly then, a CLEC's adoption of new technology cannot be grounds to deny the very right to direct interconnection contemplated by the 1996 Act.

tw's Petition, however, seeks the right of direct IP-to-IP interconnection for only the small subset of CLECs providing VoIP service in a manner comparable to tw.[6] It then spends a majority of its Petition attempting to demonstrate that its particular "facilities-based VoIP services" qualify as "telecommunications services," "telephone exchange services," and "exchange access," as defined in the Communications Act, in order to qualify for direct

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1 Comments of AT&T Inc. On The Transition From The Legacy Circuit-Switched Network To Broadband at 2, GN Docket Nos. 09-47, *et al.*, Dec. 22, 2009 ("AT&T Comments").

2 Comments of Verizon and Verizon Wireless On The Transition From Circuit-Switched Network To All-IP Network at 1, GN Docket Nos. 09-47, *et al.*, Dec. 22, 2009 ("Verizon Comments").

3 *See* tw Petition at 5 n.12.

4 Verizon Comments at 5.

5 Preamble, Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (the "1996 Act").

6 *See* tw Petition at 1.

interconnection under section 251(c)(2).[7] Because it remains to be seen when and how the Commission will ultimately classify VoIP services generally, O1 and Vaya file these comments to encourage the Commission to instead rely on its clear authority under section 201(a) to require ILECs to directly interconnect with CLECs on an IP-to-IP basis. tw's proposal would simply invite ILECs to engage in hypertechnical evaluations of every CLEC's network architecture and customer base – the very customers CLECs and ILECs compete over – before even considering to offer a direct IP-to-IP connection. Given that ILECs adamantly refuse to offer this form of interconnection currently, granting the relief tw seeks as requested would simply place yet another stumbling block on the road to the Commission's desired goal of an all-IP network.

Section 201 provides that

> It shall be the duty of every *common carrier* engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or *desirable in the public interest*, *to establish physical connections with other* ***carriers***, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.[8]

The Commission therefore has the authority to order common carriers, such as ILECs, to establish physical connections, such as direct IP-to-IP interconnections, with other carriers when the Commission finds it in the public interest to do so. Importantly, exercising its authority under section 201(a) would not require the Commission to resolve the long-simmering dispute over the proper regulatory classification of VoIP services generally. The Commission could simply mandate that ILECs must establish direct IP-to-IP interconnections with CLECs without more, thereby "facilitate[ing] an orderly transition to an all-broadband communications

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[7] *Id.* at 1-15.

[8] 47 U.S.C. § 201(a) (emphasis added).

infrastructure [by] eliminate[ing] the [ILECs' ability to] prolong the life of POTS and the PSTN."[9]

The Commission has relied on its section 201(a) authority before to require comparable carrier-interconnection obligations. In the context of CMRS providers, the Commission declared in 2007 that

> automatic roaming is a common carrier service, subject to the protections outlined in Section 201 and 202 of the Communications Act. If a CMRS carrier receives a reasonable request for automatic roaming, pursuant to Section 332(c)(1)(B) and Section 201(a), it is desirable and serves the public interest for that CMRS carrier to provide automatic roaming service on reasonable and non-discriminatory terms and conditions.... [R]oaming is a common carrier service, because roaming capability gives end users access to a foreign network in order communicate messages of their own choosing.[10]

Similarly, in the *CLEC Access Reform Order*, the Commission concluded that, based on its authority under section 201(a), it was necessary to impose limitations on IXC's ability to refuse service in order to protect universal connectivity and universal service.[11] The Commission reasoned that "any solution to the current problem that allows IXCs unilaterally and without restriction to refuse to terminate calls or indiscriminately to pick and choose which traffic they will deliver would result in substantial confusion for consumers, would fundamentally disrupt the workings of the public switched telephone network, and would harm universal service."[12]

The Commission therefore has all the authority it needs to grant the relief requested by tw, but through section 201(a). Given the Commission's desire to facilitate the transition to an all-IP network, it cannot credibly be argued that requiring ILECs to directly interconnect with

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9 AT&T Comments at 2.

10 *In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, 22 FCC Rcd. 15817, 07-143, ¶¶ 23, 25 (2007).

11 Seventh Report and Order and Further Notice of Proposed Rulemaking, *Access Charge Reform*, 16 FCC Rcd. 9923, ¶ 93 (2001) ("*CLEC Access Reform Order*").

12 *Id.*

CLECs on an IP-to-IP basis is against the public interest. As the PSTN migrates to IP technology, phone service will not disappear, it will simply be provisioned over a new platform and protocol. This migration will be fundamentally no different than the transition that occurred as the nation moved from a largely analog-based network to the digital network that exists today. But without Commission action, the nation's largest ILECs will continue to impede the transition to the all-IP network the Commission – and consumers – desire.

Indeed, IP interconnection issues are already a point of contention between carriers and it is critical that such issues are addressed and resolved in a manner that promotes and enhances competition as well as an efficient migration to IP-based networks. The Act's interconnection provisions are technology-neutral and in order to "encourage the shift to IP-to-IP interconnection where efficient," the Commission should reiterate that requesting carriers are entitled to interconnect and exchange traffic in IP format with LECs where technically feasible and on terms equivalent to those which govern traditional interconnection.[13] Further, such interconnection and traffic exchange arrangements should be memorialized in interconnection agreements, filed publicly, and, and if necessary, approved in accordance with the requirements of Section 252. If carriers are unable to reach agreement on interconnection arrangements, open issues should be resolvable through binding arbitration.

CONCLUSION

O1 and Vaya agree with tw that CLECs have the right to a direct IP-to-IP connection with ILECs, but believe section 201(a) provides the Commission with adequate authority to require such connections immediately, without the need to wait for the more complex regulatory

[13] *A National Broadband Plan for Our Future, GN Docket No. 09-51*, Chapter 4 Recommendations.

classification issues surrounding IP-based traffic to be resolved. Accordingly, the Commission should grant the relief requested by tw for the reasons stated above.

Respectfully submitted,

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